

In the High Court of Punjab and Haryana at Chandigarh

Civil Revision No. 5896 of 2007

Date of decision: 12-12-2007

Dr. Arun Gupta

..... Petitioner No.1.

Dr. (Mrs.) Rita Gupta

..... Petitioner No.2.

CORAM: Hon'ble Mr.Justice Vinod K.Sharma

**Present: Mr. Mr. A.S.Chadha, Advocate, for petitioner No.1.
Mrs. Shobha Gupta, Advocate, for petitioner No.2.**

VINOD K.SHARMA, J.

The petitioners i.e. husband and wife have filed this joint revision petition under Article 227 of the Constitution of India to challenge the order dated August 8, 2007 passed by the learned District Judge, Faridabad declining their request for waiving the six months' period of waiting under Section 13-B of the Hindu Marriage Act, 1955 (for short the 'Act').

The relief for waiving off six months' period was sought on the plea that the both the petitioners are Doctors by profession and that petitioner N o.1 had filed a petition under Section 13(1)(a) of the Act against petitioner No.2 for dissolution of marriage on August 11,2006 and the same was withdrawn. During this period, there was civil litigation between the parties with respect to the property at Faridabad. Another suit was filed in

Civil Revision No. 5896 of 2007

the Court of Civil Judge (Senior Division), Gurgaon, whereas petitioner No.2 had filed a criminal complaint under the provisions of The Protection of Woman from Domestic Violence Act, 2005. It was claimed that in the wake of multi-prolonged litigation pending inter se parties, it would be in the interest of justice, as well as in the interest of both the parties that their marriage be dissolved by mutual consent. It was also the case set up that petitioner No.2 has been adequately compensated.

It is worth noticing here that petitioner No.1 – Dr.Arun Gupta is aged 51 years and has qualification of M.B.B.S. and M.D., whereas petitioner No.2 is aged 47 years. She also possesses a degree of M.B.B.S. and is Doctor by profession. Thus, it would be seen that both the parties are mature and are capable to watch their interest. Admittedly, there was no coercion, intimidation or undue influence and keeping in view of prolonged litigation between the parties, and as per the stands taken by them, it was proved on record that there was no possibility of reconciliation.

Petitioner No.1 has already deposited a sum of Rs. 40,00,000/- (Rs. Forty lacs) towards payment of full and final settlement of claims of petitioner No.2 and the said amount is lying in the Court.

This Court in the case of **Amarjit Kaur Vs. Bhupinder Singh, 2007 (1) HLR 461** was pleased to lay down as under:-

Hindu Marriage Act, 1955, Section 13-B(2)- Divorce-
Mutual Consent- Marriage between the parties was

Civil Revision No. 5896 of 2007

performed on 9-4-2000 and the parties till date have not reconciled themselves and the marriage has been totally broken down- There is no possibility of reconciliation – Keeping in view the age of the parties, the continuation of a sterile marriage would have deleterious effect on the prospects of re-marriage of the parties – Thus it was a case, where the trial Court could have waived off the period of six months so as to enable the parties to settle independently.

The learned District Judge, while noticing the judgment referred to above, has not agreed with the view expressed therein in view of the Division Bench judgment of this Court in **Charanjit Singh Mann Vs. Neelam Mann, (2006-2) PLR 851**. In para 11 of the said judgment, the Division Bench of this Court has been pleased to lay down as under:-

“However, irrespective of existence of the above stated grounds, sub-section (2) of Section 13-B does not permit the Court to dissolve a marriage by mutual consent not earlier than six months after the date of presentation of the petition or later than the expiry of 18 months after such presentation. The legislature, in its wisdom, has consciously provided the minimum and maximum waiting period during which alone a decree for divorce by mutual consent can be passed. The apparent object behind providing this period is

Civil Revision No. 5896 of 2007

to allow time to the spouses to reconsider their decision and finally make up their mind. It also enables the court to satisfy itself that the 'consent' is free from any extraneous influence and is also not tainted with any 'collusion' between the parties.”

However, it may be noticed that the finding recorded by the Division Bench was with regard to interpretation of Section 13-B, wherein a decree of divorce was granted by converting a petition filed under Section 10 to one under Section 13-B of the Act. It was in view of the facts of the said case that the Division Bench of this Court in para 18 of the judgment was pleased to hold as under:-

“18. After a ruminated consideration of the point in issue, we are unable to persuade ourselves to agree with the learned counsel for the appellant. The doctrine of 'relation back' being not of universal application, cannot be pressed into service to defeat a statutory provision or its object. The legislative scheme unfolds that occasion to observe the minimum and/or maximum waiting period envisaged under sub-section(2) of Section 13-B of the Act would arise only when a joint petition in terms of sub-section (1) thereof is presented before the the Court. Thus, if the theory of 'relate back' is applied in such like cases then the 'waiting period' will precede the presentation of a joint petition. Such a consequence being totally alien and contrary to the

Civil Revision No. 5896 of 2007

legislative intentment behind the aforesaid provision, we reject the appellant's contention that on conversion of his petition under Section 10 into under Section 13-B of the Act, the joint petition shall be deemed to have been filed on 15-4-1998.

19. At this stage stage, it may also be mentioned that in Ashok Hurra's case (*supra*) as well as in the case of Smt. Swati Verma Vs. Rajan Verma, 2004 (1) S.C.C. 123, the Supreme Court while granting divorce by mutual consent waived off the waiting period provided in sub-section (2) of section 13-B of the Act by invoking its powers under Article 142 of the Constitution. The powers akin to article 142 of the Constitution are concededly not enjoyed upon by the High Court while exercising its appellate jurisdiction.”

However, it may be noticed in this case, the question as to whether statutory period can be waived or not was not considered.

This Court in **Amarjit Kaur's case (*supra*)** had also laid down that the statutory period prescribed under Section 13-B of the Act is six months, However, it was held that the period can be waived off under a given circumstance.

The Division Bench of this Court in the case of **Smt. Krishna Khetarpal Vs. Satish Lal, AIR 1987 P&H 191** has been pleased to lay down that in appropriate cases the Court can grant instant relief of divorce without letting the parties to go in for another bout of litigation in the procedural mill, if the circumstances so warranted. It

Civil Revision No. 5896 of 2007

was also held in the said case that requirements of Section 13-B (2) were not to be strictly followed and six months' period can be waived.

Again in the case of **Arun Chawla Vs. Smt. Reena, (1997-3) PLR 756**, the Division Bench of this Court was pleased to hold as under:-

“11. Same was the view of the Madhya Pradesh High court in the case of Padmini Hemant Singh, 1994 (1) D.M.C. 465. In the High court an application was filed under Section 13-B of the Act for grant of decree for divorce by mutual consent. In paragraphs 17 & 18, it was held as under:-

“ 17. The parties showed anxiety to terminate the torture and perish the pang without further procrastination. In this pursuit, they desired 'today' and despised 'tomorrow' , perhaps on the same line as Martial assumed in Epigrams:-

“Tomorrow will I live, the fool does say,
Today itself too late, the wise lives yesterday.”

18. By amendment, the law has set its face against unwilling perpetuation of the matrimonial status between two unwilling person. After all timetable as embodied in Section 13-B (2) is a procedural matter which is handmaid of justice. On one hand, I am satisfied that ingredients of mutual consent are fully satisfied in this case and on the other hand, I am

Civil Revision No. 5896 of 2007

disposed to hold that timetable fixed by section 13-B (2) does not apply to Appellate court and imposes no fetters as such. In view the acceptance of prayer based on consent, I found it unnecessary to scrutinise the worth of evidence led by the parties and correctness of the conclusion recorded on it.”

12. Similar was the view of the Rajasthan High Court in the case of Hari Parkash Mishra V. Smt. Shakuntala Mishra, 1995 (II) D.M.C. 202. The Court noted that when there are no chances that the parties resuming their marital life and that keeping in view the fact there is no collusion between the parties, decree of divorce and dissolution of marriage can be granted with immediate effect. A Division Bench of this Court also took note of the similar facts in the case of Harpal Singh v. Smt. Shakintala, (1995-2) 110 Punjab Law Reporter 203. The learned Additional District Judge in the cited case had dismissed the petition filed under section 13 of the Hindu Marriage Act. During the pendency of the appeal, the parties arrived at a settlement and filed a joint application under Section 13-B of the Act. It was prayed that decree for mutual divorce may be granted in the interest of justice. On being satisfied that there were no chances of their living together, the petition was allowed and decree was passed for divorce declaring

Civil Revision No. 5896 of 2007

the marriage of the parties to have been dissolved. The learned Single Judge of this Court in the case of Niranjana Kumar v. Veena Rani, (1995-2) 110 Punjab Law Reporter 200 agreed with the view point of Madhya Pradesh and Rajasthan High courts and held that when there was no chances of reconciliation, no useful purpose would be served by keeping the petition for divorce by mutual consent pending for a period of six months.”

In view of the observations made above, the period of six months was ordered to be waived.

Again in the case of **Gurpinder Kaur Sahsi Vs. Ravinder Singh Sahsi, 2005 (2) All India Hindu Law Reporter 118**, the Division Bench of this Court was pleased to lay down as under:-

“11. in AIR 2003 Punjab & Haryana 1979 (supra) (decided by one of us), the husband had filed a petition for the grant of divorce against the wife on the ground of cruelty. After hearing both the sides, the learned additional District Judge granted the decree of divorce. Aggrieved against the same, the wife filed appeal in this Court. During the pendency of the appeal, the parties arrived at a compromise and an application under Order 6 Rule 17, CPC was filed seeking amendment of the petition converting it into a petition for divorce by mutual consent. The said amendment was allowed and after recording the statements of the parties, the marriage between the parties was dissolved by a

Civil Revision No. 5896 of 2007

decree of divorce by mutual consent, by curtailing the period of six months and placing reliance on the law laid down by a Division Bench judgment of this Court in Smt. Krishna Khetarpal's case (supra). In our opinion, the law laid down in this authority would have no application to the facts of the present case. As referred to above, in the reported case, the husband had filed a petition for divorce on the ground of cruelty. The said petition was contested by the wife. The learned Additional District Judge granted the decree of divorce in favour of the husband, vide decree dated 28-11-1996. Aggrieved against the same, the wife filed appeal in this Court. The appeal remained pending for almost 6 years and it was only on 13-11-2002 that the decree for divorce by mutual consent was granted on the application jointly filed by the parties seeking amendment of the divorce petition and converting it into a petition for divorce by mutual consent under Section 13-B of the Act. In our opinion, under such circumstances, the Court was certainly competent to grant the decree of divorce by mutual consent under Section 13-B of the Act, since the matrimonial litigation between the parties remained pending, for more than 6 months. However, the law laid down in this authority would have no application to the facts of the present case. As referred to above, in the present case for the first time the divorce petition with mutual consent

Civil Revision No. 5896 of 2007

was jointly filed by the parties on 10/10/2002 and just on the 24th day thereof i.e. on 24-10-2002, the marriage between the parties was dissolved by a decree of divorce under Section 13-B of the Act which was just contrary to the provisions of Section 13-B of the Act and the law laid down by the Hon'ble Supreme Court in Smt. Sureshta Devi's case (supra).

In view of the above, the present appeal deserves to be allowed and the judgment and decree passed by the trial Court are liable to be set aside.”

Again in the case of **Suresh Chand Vs. Kusum alias Sushma, (1998-3) PLR 181** and in **Jaswinder Kaur Vs. Suresh Kumar, II (2006) DMC 745 (DB)** the Division Bench of this Court, while allowing the petition for divorce by converting it to one under section 13-B of the Hindu Marriage Act, was pleased to hold that where the parties are unable to live together, their marriage should be dissolved by a decree of divorce by mutual consent and waiting period of six months was waived.

This view also finds support from the judgment of the Hon'ble Madhya Pradesh High Court in the case of **Dinesh Kumar Shukla Vs. Neeta, II (2005) DMC 51 (DB)**.

The judgments of the Hon'ble Kerala High Court in the case of **P. Girija Vs. Suresh Kumar & others, 2007(1) All India Hindu Law Reporter 728** and Rajasthan High Court in the case of **Nand**

Civil Revision No. 5896 of 2007

Kanwar Vs. Rajendra Singh Bhati, II 2005 DMC 281 (DB) are on the same lines i.e. the Court in given circumstances can waive statutory period of six months.

Thus, the law is almost settled that the statutory period prescribed for divorce by mutual consent is six months and the parties are bound to wait for that. But, at the same time, on the facts and circumstances of a particular case, the Court is competent to waive off the statutory period in the interest of justice and keeping in view the special circumstances of each case. The Court thus has to take a decision on merit keeping in view facts of each case.

It may be noticed in the present case, that both the husband and wife are Doctors of mature age. There are no chances of reconciliation and by way of a compromise, they have settled their differences/disputes and the compensation payable stands already deposited in the Court.

In view of the special facts and circumstances of the case, the learned District Judge was not justified in declining the application for waving off the statutory period of six months especially when the petition for divorce is pending for almost an year now.

In view of what has stated above, this revision petition is allowed and the impugned order passed by the learned District Judge, Faridabad, is set aside and the joint application moved by the parties for waiving off the statutory period of six months is allowed.

The parties, through their Counsel, are directed to appear before the District Judge, Faridabad, on December 21, 2007 for

Civil Revision No. 5896 of 2007

recording their statements to obtain a decree of divorce by mutual consent.

December 12,2007
'dls'

(VINOD K.SHARMA)
JUDGE

Civil Revision No. 5896 of 2007